IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10299 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARAT SURABHAI @ SURESHBHAI ROHIT

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR P.S.SHUKLA AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 21/12/2000

ORAL JUDGEMENT

#. The petitioner by way of this petition has challenged his order of detention passed by the Police Commissioner, Ahmedabad City, Ahmedabad on 17.8.2000 in exercise of the powers conferred upon him vide section 3(1) of the

Gujarat Prevention of Anti social Activities Act 1985 (PASA Act for short). The petitioner came to be detained from 17.8.2000 in pursuance of the above said order.

#. The detaining uthority took into consideration the fact that in all 4 crimes came to be registered against the petitioner under the Bombay Prohibition Act. The detaining authority relied upon the investigation carried on in the above said crime and the complaints filed. The detaining authority also placed reliance upon the statements of 2 witnesses who on assurance of anonymity offered their statements to the extent that the petitioner was engaged in dealing and selling of illegal liquor and on suspicion that the witnesses concerned gave information regarding his activity to the police, concerned witnesses were beaten by the petitioner. The detaining authority therefore, came to the conclusion that the petitioner was dealing and selling illegal liquor and was a hardened criminal and a head strong person. The detaining authority declared that the petitioner to be a bootlegger within the meaning of section 2(b) of the PASA Act.

#. Learned advocate Ms. D.R. Kachhavah for the petitioner and Mr. P.S.Shukla learned AGP for the respondents were heard.

#. Various grounds were advanced against the order of detention. It was vehemently urged on behalf of the petitioner that the order of detention is vitiated by non application of mind on the part of the detaining authority in not considering the less drastic remedy of cancellation of bail available to the detaining authority. It was urged that the petitioner was on bail in 3 offences out of the 4 offences registered against him. The petitioner was in custody in one of the 4 crimes registered against him.

#. From the rival contention it clearly appears that there is total non application of mind on the part of the detaining authority obviously on 2 important relevant aspect of the matter. Firstly the detaining authority failed to consider that in one of the crimes registered against the petitioner, the petitioner was in judicial custody right from 1.7.2000 and the order of detention came to be passed on 17.8.2000. The detaining authority was oblivious to the fact that the petitioner was in judicial custody long before passing of the order of detention and therefore, was not capable of continuing his illegal and anti social activities. Secondly in 3 out of the 4 crimes registered against the petitioner, he

was in judicial custody. The remedy of cancellation of bail in the said crimes was available to the concerned authority. Instead of seriously considering this less drastic remedy available, the detaining authority simply brushed aside this aspect of the case by merely saying that the procedure for cancellation of bail was likely to consume more time and therefore, the detaining authority did not consider this to be a fit remedy available to prevent the illegal activity of the petitioner. Non application of mind on the part of the detaining authority also emerges from this aspect of the case. Instead of resorting to the said less drastic remedy available to the petitioner, the detaining authority has chosen to be oblivious about the less drastic remedy available. For the above said two reasons the order of detention is required to be set aside.

#. In this view of the matter, the order passed by the Police Commissioner, Ahmedabad city, Ahmedabad on 17.8.2000 against the petitioner under the PASA Act is hereby quashed and set aside. The petitioner-Bharat Surabhai alias Sureshbhai Rohit is hereby ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute.

(J.R.Vora.J)

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